



UNITED STATES DISTRICT COURT

DISTRICT OF MARYLAND

101 W. LOMBARD STREET
BALTIMORE, MARYLAND 21201

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2003 NOV 26 P 2:52
CLERK'S OFFICE
BALTIMORE
DEPUTY

Chambers of
Hon. Marvin J. Garbis
United States District Judge
410-962-7700

November 26, 2003

TO ALL COUNSEL OF RECORD

Re: Crofton v. G & H, MJG-96-1378

Dear Sir/Madam:

I have just received the Motion of E. Stewart Mitchell for Leave to File Surreply in Opposition to Plaintiffs' Motion to Reopen. I happened to glance at the surreply and find that, according to Ms. Murray, Plaintiff's counsel disclosed the amount of the purported settlement in the pending Motion to Enforce the Settlement Agreement which I have not yet read. I am rather disturbed, to say the least.

After remand, the parties sought to reach a settlement. In my Memorandum to counsel of July 8, 2003, I stated:

I understand from Judge Grimm that the parties reached agreement on the merits (on terms totally undisclosed to me) but reached an impasse regarding an allocation of value for tax purposes.

* * *

By no means do I wish to know anything about the parties' positions on settlement on the merits. However if - without such knowledge - I might be helpful in discussing approaches to the tax issues presented, I would make myself available to meet with counsel. . . .

In response, Plaintiffs' counsel wrote a letter of July 23, 2003 agreeing with Defendants' counsel's letter of July 18, 2003

COUNSEL OF RECORD

November 26, 2003

Page No. 2

that a meeting with me to discuss the tax impasse could be helpful. Plaintiff's counsel stated, in particular: "We believe that these matters can be discussed without revealing settlement positions and without any discussion of either party of the merits of the case."

On August 29, 2003, I met with counsel to mediate the tax allocation impasse. I was informed - with the consent of defense counsel - that the settlement was to involve a transaction whereby the defense would acquire the Property for an undisclosed amount, there would be mutual releases etc. The discussion ensued with regard to possible structuring of the transaction, possible agreements as to the portion of the undisclosed amount to be allocated to the land. The discussion concluded with apparent agreement as to the principle of the after tax effect as a percentage of whatever the undisclosed amount may have been. The parties were then to ascertain whether they could reach agreement either as to the allocation or as to an alternative mechanism (for example arbitration) to resolve the allocation issue.

On November 14, 2003, Plaintiff filed its Motion to Enforce Settlement Agreement. On or about that date a copy of the motion was received in Chambers. As is my custom, I noted the name of the motion, did not read it or the associated papers to await the full briefing, and had my secretary set up the dates for response and reply.

On this date, as noted above, I became aware that Mitchell's counsel, Ms. Murray, asserted that the Motion to Enforce Settlement Agreement revealed the amount involved in the settlement. I was greatly concerned because I did not wish to know of the amount and thought that it was absolutely obvious to counsel that I did not wish to know this. I took the file, including the Motion to Enforce Settlement, and asked one of Judge Davis' law clerks, Jamillia Ferris, to review the Motion and advise me whether it, in fact, revealed the amount and whether, in her opinion, it appeared that the Plaintiff's arguments could be presented in principle without revealing the amount of the settlement. I am advised that the Motion does, in fact, reveal the amount and that Ms. Ferris, admittedly without any background in the case, thinks it might be possible to revise the papers so as to present the arguments without revealing the amount.

COUNSEL OF RECORD

November 26, 2003

Page No. 3

This case has been, and will be, tried to the Court. Therefore, I may have to make factual decisions regarding valuation-type issues and there could be an appearance of impropriety if I were told of the parties' settlement positions. Also, in view of the substantial time and effort investment that I have in this case, it would be most inefficient to have a new judge preside over further proceedings.

Under the circumstances, I have taken, and will take, steps to eliminate the problem. Accordingly:

1. I will, by separate Order, seal the Motion to Enforce Settlement and papers related thereto
2. The said Motion to Enforce Settlement is hereby DENIED WITHOUT PREJUDICE.
3. Plaintiff shall, by December 12, 2003, arrange a telephone conference with Magistrate Judge Grimm regarding the filing of any further Motion to Enforce Settlement and papers relating thereto.
4. I have requested Magistrate Judge Grimm to review the papers filed relating to the Motion to Reopen and to advise whether there is any reason that I should not read those papers.
5. No party shall, in any fashion, inform or attempt to inform me of any details relating to the parties' settlement positions that have not heretofore been made known to me by the agreement of all parties.

Although informal, this letter constitutes an Order of this Court.

Yours truly

/s/

Marvin J. Garbis
United States District Judge

CC: Clerk of Court, Magistrate Judge Grimm